



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

March 25, 2004

Barry Needleman, Esq.
McLane Graf Raulerson & Middleton
15 North Main Street
Concord, NH 03301-4945

Re: Docket No. AF 04-002 - Administrative Fine by Consent Agreement

Dear Attorney Needleman:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in this matter executed by Robert R. Scott, Air Resources Division Director, and accepted by Commissioner Michael P. Nolin on March 24, 2004. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

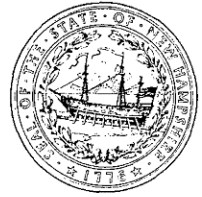
Sincerely,

COPY
Michael P. Nolin,
Legal Assistant

cc: Robert R. Scott, Director, Air Resources Division
Gretchen Rule, DES Legal Unit
Mark R. Harbaugh, DES Legal Unit
Pamela Monroe, DES ARD
Raymond Walters, DES ARD
DES Public Information Officer
L.R. Major, Jr., Pike Industries, Inc.



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Pike Industries, Incorporated
Region 1
3 Eastgate Park Road
Belmont, NH 03220

**ADMINISTRATIVE FINE
BY CONSENT
No. AF 04-002**

I. INTRODUCTION

This Administrative Fine by Consent is entered into between the Department of Environmental Services, Air Resources Division ("the Division"), and Pike Industries, Incorporated ("Pike"), pursuant to RSA 125-C:15,I-b. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, PO Box 95, Concord, NH 03302.
2. Pike Industries, Incorporated ("Pike") is a New Hampshire corporation having a mailing address of 3 Eastgate Park Road, Belmont, New Hampshire 03220.

III. BACKGROUND

1. RSA 125-C authorizes the Department of Environmental Services ("DES") to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted the N.H. Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15,I-b(b) authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of RSA 125-C and rules promulgated pursuant thereto.
3. RSA 125-C:6 authorizes DES to establish and operate a statewide system under which permits shall be required for the construction, installation, operation or material modification of air pollution devices and sources. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rules Env-A 600.
4. RSA 125-C:2,XI defines a stationary source as "any building, structure, facility, or installation which emits or which may emit any regulated air pollutant".

5. Env-A 607.01(q) requires the owner of a stationary source, area source, or device subject to the new source performance standards ("NSPS") contained in 40 CFR 60, except a source or device that is subject only to recordkeeping requirements in the applicable NSPS, to obtain a temporary permit prior to the construction or installation of the source or device.
6. 40 CFR 60, Subpart I, is the NSPS that applies to Hot Mix Asphalt ("HMA") facilities. Env-A 101.149 defines a HMA facility as "any facility, including all equipment, used for the manufacture of asphalt by heating and drying aggregate and asphalt concrete."
7. Pike operates HMA Batch Plant 816 ("Plant 816") located on Ryder Corner Road in Newport, New Hampshire.
8. On May 16, 2001, DES issued Temporary Permit TP-BP-0660 ("the Permit") to Pike for its operation of HMA Batch Plant 816.
9. Condition VIII of the Permit requires Pike to conduct EPA method stack emissions testing for particulate matter from Plant 816 at maximum production rate conditions within 60 days of achieving maximum production, but not longer than 180 days from startup.
10. Condition IV.D of the Permit limits the emissions of particulate from Plant 816 to less than 0.04 grains per dry standard cubic foot ("gr/dscf").
11. Condition VI of the Permit requires the operator of Plant 816 to conduct daily monitoring of the pressure differential across the baghouse unit by making daily observations of the gauges located on the baghouse and recording the pressure indicated by each gauge. Condition IX.E.3.b of the Permit requires Pike to maintain the records of daily pressure differential measurements in an onsite log book.
12. On October 9, 2001, Pike requested in writing to DES that it be given an extension until August 1, 2002 to perform the required particulate emissions testing. Plant 816 is rated, and limited by the Permit to operate, at a production rate of no more than 300 tons of asphalt produced per hour. During its calendar year 2001 operating season, Pike was not able to operate at the maximum production rate of HMA Batch Plant 816 that is required for testing. DES verbally approved Pike's request to extend the testing deadline into the next operating season.
13. Pike performed stack testing on June 18, 2002. On July 17, 2002, the testing company provided Pike with preliminary results from the test that it had failed to comply with the emission limit, emitting particulate matter at a rate of 0.08 gr/dscf averaged over the 3 one-hour test runs. Pike performed a photoluminescence, or blacklight, test of the baghouse the same day and found and replaced 6 damaged fabric filter bags. On July 18, 2002, Pike informed DES that it had received preliminary results from the testing company that it had exceeded the 0.04 gr/dscf emission limit.
14. On August 9, 2002, DES received the final stack test report of the particulate emissions testing performed on June 18, 2002. On August 26, 2002, DES reviewed the results of the testing and confirmed that Pike had failed to comply with the limit of 0.04 gr/dscf in the Permit.

15. On August 9, 2002, Pike performed a retest for particulate emissions from Plant 816. The results of the test showed that Pike was now in compliance with the particulate emission limit, with an as-tested concentration of 0.013 gr/dscf.

16. On November 20, 2002, DES sent Pike a letter requesting that it submit to DES within 30 days of receipt, records on plant operation, including daily production rates and hours of operation, records of baghouse maintenance, and records of baghouse inspections and blacklight tests. In addition, DES requested that Pike submit its records of daily monitoring of differential pressure across the baghouse.

17. On January 7, 2003, Pike responded to DES's request for information. In its response to DES, Pike stated that the records of daily differential pressure were not available, because the daily readings had not been recorded as required by the Permit.

IV. ALLEGATIONS

1. Pike has violated Condition IV.D of the Permit by emitting particulate matter at an as-tested rate of 0.08 gr/dscf, in exceedance of the limit of 0.04 gr/dscf.
2. Pike has violated Condition VI of the Permit by failing to conduct and record daily monitoring of the pressure differential across the baghouse unit by making daily observations of the gauges located on the baghouse for calendar year 2001.
3. Pike has violated Condition VI of the Permit by failing to conduct and record daily monitoring of the pressure differential across the baghouse unit by making daily observations of the gauges located on the baghouse for calendar year 2002.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. Pursuant to RSA 125-C, the Division has determined the violation noted in Paragraph IV.1 above to be a major deviation from the requirements with a minor potential for harm. RSA 125-C:15, I-b specifies a fine range of \$851 to \$1,500. For this violation, the Division is seeking a fine of \$1,250.
2. Pursuant to RSA 125-C, the Division has determined the violation noted in Paragraph IV.2 above to be a moderate deviation from the requirements with a minimum potential for harm. RSA 125-C:15, I-b specifies a fine range of \$851 to \$1,500. For this violation the Division is seeking a fine of \$925.
3. Pursuant to RSA 125-C, the Division has determined the violation noted in Paragraph IV.3 above to be a moderate deviation from the requirements with a minimum potential for harm. RSA 125-C:15, I-b specifies a fine range of \$851 to \$1,500. For this violation the Division is seeking a fine of \$925.
4. Pike agrees to pay the amount of \$3,100 upon execution of this Administrative Fine by Consent by an authorized representative of Pike.

5. Payment under Paragraph V.4 shall be made by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

6. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

7. By executing this Administrative Fine by Consent, Pike waives its right to a hearing on or any appeal of the administrative fines identified in Paragraphs V.1 through V.3, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction. Other than such enforcement action, DES shall pursue no further administrative action against Pike relative to the allegations contained herein.

8. The parties have entered into this Administrative Fine by Consent to avoid the time and cost of litigation. Except as described in Paragraph 7 above, this agreement shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by Pike; (ii) an admission by Pike or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Pike might raise in any third party proceeding.

9. The effective date of this Administrative Fine by Consent will be the date on which Pike, the Director of the Air Resources Division and the Commissioner of DES, sign it.

10. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default shall be deemed a waiver of its rights with regard to that breach or default, nor shall such failure be construed as a waiver of the right to enforce each and all of the provisions of this agreement on any further breach or default.

PIKE INDUSTRIES, INCORPORATED

COPY

By:

Duly Authorized

Christian Zimmerman, NH Regional Manager.

3/22/04

Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY

Robert R. Scott, Director

Air Resources Division

3/24/04

Date

COPY

Michael P. Nolin, Commissioner

Department of Environmental Services

03 24 04

Date

cc: M. Harbaugh, DES Legal Unit
R. Kurowski, EPA Region 1
Town Council, Town of Newport
AFS # 3301900069